

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No.: 10/796,485 Confirmation No.: 2291
Applicant(s): Stone, et al.
Filed: March 9, 2004
Art Unit: 3687
Examiner: Rudy, Andrew J.
Title: SYSTEMS, METHODS AND COMPUTER PROGRAM PRODUCTS FOR
IMPLEMENTING PROCESSES RELATING TO RETAIL SALES

Docket No.: 940472-267909
Customer No.: 24239

**REPLACEMENT RESPONSE, WITH TRAVERSE,
TO RESTRICTION REQUIREMENT**

This is in response to the Office Action dated September 8, 2008, in which the Examiner has indicated that Applicants' response to an Office Action dated April 30, 2008 was not fully responsive. Specifically, the Office Action states that Applicants failed to indicate which claims are withdrawn following election of claims.

Applicants file this Response to replace the Response filed May 30, 2008. Applicants hereby provisionally elect Claims 2-6 and 8 with traverse. With regard to this provisional election, under M.P.E.P. § 821, Applicants are not required to designate non-elected claims as withdrawn in making the election. Designations of claims as withdrawn are made by the Examiner and not Applicant - "All claims that the examiner holds as not being directed to the elected subject matter are withdrawn from further consideration by the examiner in accordance with 37 C.F.R. § 1.142(b)." See M.P.E.P § 821.

Applicants respectfully traverse the restriction requirement because it fails to satisfy the "serious burden" prerequisite of M.P.E.P § 803. "If the search and examination of all the claims in an application can be made without serious burden, the [Examiner] *must* examine them on the merits, even though they include claims to independent and distinct inventions." M.P.E.P § 803 (emphasis added). Here, examination of all claims can be completed without serious burden. The Examiner has already conducted a search and examination on the merits. Completing examination of all pending claims should involve no more burden than is customarily devoted to a single patent application—let alone a "serious burden."

A first Office Action previously issued with regard to current Claims 2-13 of the application. In the first Office Action, the Examiner posed a rejection based on prior art to all of the claims. As required by the M.P.E.P. to avoid piecemeal examination, an Examiner is to examine and provide specific rejections as to each claim in an application when issuing a rejection. See M.P.E.P. § 707.07(g). Applicants presume that when the Examiner originally examined Claims 2-13 and issued the Office Action that each claim was examined. As such, any burden associated with searching and examination of Claims 2-13 would have occurred at the time of the first Office Action.

In responding to the first Office Action, Applicants merely rewrote some of the dependent claims into independent form. As such, there has been no substantive change to Claims 2-13 following issuance of the first Office Action, and thus, no added burden has been imposed on further examination – let alone a “serious burden.” In the absence of a “serious burden,” Applicants respectfully submit that the Restriction Requirement is not proper under M.P.E.P. § 803 and should be withdrawn.

On another note, Paragraph 3 of the Office Action indicates that Applicants have not adequately depicted embodiments disclosed in the application in the figures. Applicants are perplexed by this rejection. It is not clear as what the Office Action is referring to in making this objection. Applicants respectfully submit that the disclosed embodiments of the invention are adequately depicted in the figures.

Should the Examiner have further questions or comments with respect to examination of this case, it is respectfully requested that the Examiner telephone the undersigned so that further examination of this application can be expedited.

It is not believed that extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 CFR § 1.136(a), and any fee required

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therefore (including fees for net addition of claims) is hereby authorized to be charged to Deposit
Account No. 13-4365.

Respectfully submitted,



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TRADEMARK OFFICE ON November 6, 2008.